

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

ALBERT GRAY, Administrator, *et al*

v.

JEFFREY DERDERIAN, *et al*

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C.A. No. 04-312 L

**ANSWER OF DEFENDANT, BARRY WARNER,  
TO PLAINTIFFS' FIRST AMENDED MASTER COMPLAINT**

Now comes Defendant, **Barry Warner**, and hereby provides answer to Plaintiffs'

First Amended Master Complaint as follows:

**PARTIES**

**Plaintiffs**

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 1-240 of Plaintiffs' First Amended Master Complaint, and, therefore, leaves Plaintiffs to their proof.

**GENERAL ALLEGATIONS AS TO ALL DEFENDANTS**

271. The allegations of Paragraph 271 of Plaintiffs' First Amended Master Complaint can neither be admitted nor denied as they state conclusions of law rather than factual assertions.

**JEFFREY DERDERIAN**

272. Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

273-279. As to Paragraphs 273-279 of Plaintiffs' First Amended Master Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and, therefore, denies same.

**COUNTS I-XXXIX and COUNTS XLII-XLVII AND COUNTS LI-LXXXI**

As to Paragraphs 280, 282, 287, 289, 294, 296, 300, 302, 308, 310, 316, 318, 324, 326, 332, 340, 342, 348, 350, 356, 358, 364, 366, 372, 374, 385, 393, 403, 409, 426, 428, 430, 432, 437, 439, 445, 451, 457, 473, 478, 485, 490, 493, 499, 504, 507, 512, 533, 536, 540, 561, 564, 568, 589, 592, 597, 618, 621, 623, 626, 629, 632, 644, 649, 652, 660, 662, 664, 676, 678, 684, 686, 692, 694, 696, and 702 of Plaintiffs' First Amended Master Complaint, Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

As to Paragraphs 281, 283-286, 288, 290-293, 295, 297-299, 301, 303-307, 309, 311-315, 317, 319, 320-323, 325, 327-331, 333, 334-339, 341, 343, 344-347, 349, 351, 352-355, 357, 359-363, 365, 367-371, 373, 375-384, 386, 387-392, 394-402, 404-408, 410-425, 427, 429, 431, 433-436, 438, 440-444, 446-450, 452-456, 458, 469-472, 474-477, 479, 480-484, 486-489, 491, 492, 508-511, 513-532, 534, 535, 537-539, 541-560, 562, 563, 565-567, 569-588, 590, 591, 593-596, 598-617, 619, 620, 622, 624, 625, 627, 628, 630, 631, 633-643, 645-648, 650, 651, 653-659, 661, 663, 665-675, 677, 679-683, 685, 687-691, 693, 695, 697-701, and 703-706 of Plaintiffs' First Amended Master Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore, denies same.

### **COUNT XXXIX**

#### **Barry H. Warner**

459. Defendant admits the allegations set forth in Paragraph 459 of Plaintiffs' First Amended Master Complaint.

460. Defendant admits the allegations set forth in Paragraph 460 of Plaintiffs' First Amended Master Complaint.

461. Defendant denies the allegations set forth in Paragraph 461 of Plaintiffs' First Amended Master Complaint.

462. Defendant denies the allegations set forth in Paragraph 462 of Plaintiffs' First Amended Master Complaint.

463. Defendant denies the allegations set forth in Paragraph 463 of Plaintiffs' First Amended Master Complaint.

464. Defendant denies the allegations set forth in Paragraph 464 of Plaintiffs' First Amended Master Complaint.

### **COUNT XL**

#### **Barry H. Warner - Negligence**

465. Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

466. Defendant denies the allegations set forth in Paragraph 466 of Plaintiffs' First Amended Master Complaint.

## **COUNT XLI**

### **Violation of Rhode Island General Laws Title 9, Chapter 1, Section 2**

467. Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

468. Defendant denies the allegations set forth in Paragraph 468 of Plaintiffs' First Amended Master Complaint.

## **COUNT XLVIII**

### **American Foam Corporation - Negligence**

493. Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

494. Defendant admits the allegations set forth in Paragraph 494 of Plaintiffs' First Amended Master Complaint.

495. Defendant admits it is a distributor of foam and that a sale of the foam took place prior to February 20, 2003, but is without knowledge as to who actually sold the foam to The Station nightclub. Defendant denies the remaining allegations set forth in Paragraph 488 of Plaintiffs' First Amended Master Complaint.

496. Defendant denies the allegations set forth in Paragraph 496 of Plaintiffs' First Amended Master Complaint.

497. Defendant denies the allegations set forth in Paragraph 497 of Plaintiffs' First Amended Master Complaint.

498. Defendant denies the allegations set forth in Paragraph 498 of Plaintiffs' First Amended Master Complaint.

## **COUNT XLIX**

### **American Foam Corporation - Strict Liability**

499. Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

500. Defendant denies the allegations set forth in Paragraph 500 of Plaintiffs' First Amended Master Complaint.

501. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 501 of Plaintiffs' First Amended Master Complaint, and therefore, denies same.

502. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 502 of Plaintiffs' First Amended Master Complaint, and therefore, denies same.

503. Defendant denies the allegations set forth in Paragraph 503 of Plaintiffs' First Amended Master Complaint.

## **COUNT L**

### **American Foam Corporation – Breach of Warranty**

504. Defendant restates its responses to all prior paragraphs of Plaintiffs' First Amended Master Complaint as if fully set forth herein.

505. Defendant denies the allegations set forth in Paragraph 505 of Plaintiffs' First Amended Master Complaint.

506. Defendant denies the allegations set forth in Paragraph 506 of Plaintiffs' First Amended Master Complaint.

**WHEREFORE**, Defendant, ***Barry Warner***, demands judgment against Plaintiffs for costs.

#### **FIRST AFFIRMATIVE DEFENSE**

Defendant denies the applicability of the doctrine of strict liability in tort to this litigation.

#### **SECOND AFFIRMATIVE DEFENSE**

Defendant states that Plaintiffs' claims against Defendant are barred because damages or losses experienced, if any, were not due to any act or failure to act of this Defendant, but were caused solely by the acts of a third-party or parties for whose acts or failure to act this Defendant is not responsible.

#### **THIRD AFFIRMATIVE DEFENSE**

Defendant states that Plaintiffs were not in the exercise of due care, but rather the negligence of Plaintiffs contributed to or caused the injuries or damages complained of, and therefore, the recovery of Plaintiffs is barred in whole or in part, or is subject to diminution.

#### **FOURTH AFFIRMATIVE DEFENSE**

Defendant gave no warranties, express or implied, to Plaintiffs or to anyone acting on their behalf.

#### **FIFTH AFFIRMATIVE DEFENSE**

Defendant states that if there were express or implied warranties as alleged in the Complaint, which Defendant specifically denies, Plaintiffs were not within the scope of any

such alleged warranties and no sale to Plaintiffs ever occurred of any product sold or distributed by Defendant.

#### **SIXTH AFFIRMATIVE DEFENSE**

Defendant states that Plaintiffs' claims based on allegations of express or implied warranty are barred for the reason that no sale of goods occurred.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Defendant states that no one relied upon the skills and judgment of the Defendant in selecting the product referred to in the Complaint.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Defendant states that if it was liable, negligent or in breach of any warranty, all of which it expressly denies, Defendant's liability in any or all of those events has been terminated by the intervening acts, omissions, or negligence of others for whose conduct Defendant is not legally responsible.

#### **NINTH AFFIRMATIVE DEFENSE**

Defendant states that the Complaint fails to state any claim upon which relief can be granted to the extent that it seeks punitive or exemplary damages, which are not recoverable under applicable law.

#### **TENTH AFFIRMATIVE DEFENSE**

Defendant states that an award of punitive damages against Defendant in this case would be unconstitutional and in violation of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

Defendant states that if Defendant, its agents or servants made any express or implied warranties, which Defendant specifically denies, then Defendant denies that it breached any of the warranties.

#### **TWELFTH AFFIRMATIVE DEFENSE**

Defendant states that if Defendant, its agents or servants made any express warranties, allegations which Defendant specifically denies, then Plaintiffs did not rely on the express warranties and further, there was no such reliance by any person or entity authorized to represent Plaintiffs.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

Defendant states that Plaintiffs failed to give notice of the alleged breaches of warranties within a reasonable time.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

Defendant states that Plaintiffs were not a third-party beneficiary with reference to any alleged warranties, either express or implied, and, therefore, Plaintiffs cannot recover in this action.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

Defendant states that if Plaintiffs prove that Plaintiffs were injured as alleged, said injuries were caused by the intervening and/or superseding acts of third persons for whom this Defendant is not liable.

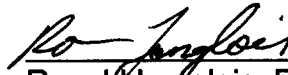


**SIXTEENTH AFFIRMATIVE DEFENSE**

Defendant pleads *General Laws of Rhode Island, §9-1-32.*

**BARRY WARNER**

By his Attorneys,



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**Smith & Brink, P.C.**  
One State Street, Suite 400  
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(401) 351-9970  
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Dated: February 3, 2005

Defendant, **Barry Warner**, hereby claims a trial by jury.



Ronald Langlois, Esq.

### CERTIFICATION

I hereby certify that on the 4<sup>th</sup> day of February, 2005, a true copy of the within was emailed to:

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